

SPECIAL ATTENTION

SUMMARY OF REQUIREMENTS FOR FEDERAL-AID PROJECTS

1. Subletting On Federal-aid Contracts.

- a. On Federal-Aid projects, the following documents are required to be incorporated in and made a part of every subcontract agreement (including lower-tier subcontract agreements):

- NH DOT Policy on Subcontracting
- Required Contract Provisions (FHWA-1273)
- Disadvantaged Business Enterprise (DBE) Policy (SPECIAL ATTENTION item)
- DBE Program Requirements (Standard Spec 103.06)
- *41 CFR 60-4.2 – Solicitations
- *41 CFR 60-4.3 – Equal Opportunity Clauses
- Payroll/Wage Requirements Summary
- **U.S. Department of Labor wage rates entitled “GENERAL WAGE DECISION” (as contained in the contract)

*Applicable only to contracts or subcontracts in excess of \$10,000

**Does not apply to Material Suppliers, unless performing work on site

- b. Contractors shall not be approved/authorized to work until the Department’s Annual Assurances requirements have been fulfilled.
- c. In accordance with Form FHWA 1273, Required Contract Provisions, Section I, Paragraph 2, the Prime Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor. This shall include any unpaid wages found to be owed that is not paid by a subcontractor or lower-tier subcontractor.
- d. Municipally Managed Projects Only: NH DOT Office of Federal Compliance is the sole approval authority for all Municipally managed construction projects. Consents to sublet shall be submitted directly to the Office of Federal Compliance.
2. **FHWA Form 1273, Required Contract Provisions.** The Department will furnish copies of the Required Contract Provisions, notices, report forms, Acknowledgment Certification and Transmittal Requests for subcontractor approval to the apparent low bidder following bid openings.
3. **OFC Form 1, Monthly Employment Utilization Report.** Contractors performing \$10,000 or more work on Federal-aid construction projects are required to submit a completed Monthly Employment Utilization Report, OFC Form 1, on a monthly basis. Reports will be sent directly to the NHDOT Office of Federal Compliance no later than the 15th of each month for any such month work is performed. When the 15th falls on a weekend or a holiday, the completed report is due no later than the next business day. Prime Contractors are responsible for the collection and submission of monthly utilization reports for all subcontractors and lower-tier subcontractors.

4. **Temporary Suspensions.**

- a. Any Contractor, Subcontractor, or Lower-tier Subcontractor found to be in violation of FHWA Form 1273, Required Contract Provisions, made part of its contract, or has failed to comply with OFC Field Audit requirements, shall be required to take corrective action before participating in future projects funded by the Department. Corrective action shall include, but is not limited to, the submission of certified payrolls or other records and reports necessary to verify compliance with the Provisions.
- b. Any Contractor, Subcontractor or Lower-tier Subcontractor found to have repeatedly violated the FHWA Form 1273, Required Contract Provisions, may be required to complete 4-hours of Federal Contract Compliance Training conducted by the NH DOT Office of Federal Compliance. When mandated, a principal owner and/or company executive and his/her payroll accountant shall attend. Federal Contract Compliance Training must be completed before participation on future projects is authorized. This requirement does not relieve the Contractor of its obligations under the prime contract, nor does it prevent the Department from seeking other remedies or enforcement action, as provided by the governing Rules, Laws, and Federal Regulations.
- c. Companies are notified of suspensions in writing. Actions the company must take to have participation privileges restored will be clearly indicated. Companies will also be advised that if a satisfactory response is not received within 30 days of receipt of the suspension notice, the company will be considered “non-responsive.” In cases where companies are non-responsive, and unpaid wages on the part of the subcontractor or lower-tier subcontractor are involved, the matter will then be deferred to the Prime Contractor for payment of wages as provided in Form FHWA 1273, Required Contract Provisions, Section I, Paragraph 2.

5. **Right To Withhold Payments.** The Department may withhold payments claimed by the Contractor on account of:

- a. Failure of the Contractor to make payments to Subcontractors for materials or labor.
- b. Regulatory non-compliance or enforcement.
- c. Failure to comply with NH DOT Office of Federal Compliance Field Audit Report requirements.
- d. Failure to comply with monthly reporting requirements, as applicable.
- e. For projects with an OJT requirement, failure to submit OJT 1, On-The-Job Training Acknowledgement and Statement of Intent within 30 days of the project start date.
- f. Failure to submit closeout documentation.
- g. All other causes that the Department reasonably determines negatively affect the State’s interest.

6. **Final Payment Release.** Once final project records are transferred to the NH DOT Office of Federal Compliance, a final review shall be performed to determine compliance with the Federal provisions. Release of any final payment shall not be made to the Contractor until the Office of Federal Compliance issues a payment release letter (ok to pay) certifying:

- a. All required payrolls, labor, and EEO documentation have been received and deemed complete and correct.
- b. DBE requirements stipulated in the Contract and/or the Required Contract Provisions have been fulfilled.

7. **Deposits and Escrows:** Every attempt is made to complete compliance actions and resolve any disputes before the project is completed and final payments are made. Sometimes, however, corrective actions or disputes continue after completion and provisions must be made to ensure that funds are available to pay any wage restitution that is ultimately found due. In these cases, the project can proceed to final closing provided the Prime Contractor, from payments already provided him/her, provides written evidence a deposit of an amount equal to the potential liability for wage restitution and liquidated damages, if applicable, has been deposited in a *escrow account*. When a final decision is rendered, the Prime Contractor makes disbursements from the account in accordance with the decision. Deposit/escrow accounts are established for one or more of the following reasons:

- a) Where the parties have agreed to amounts of wage restitution that are due but the employer has not yet furnished evidence that all the underpaid workers have received their back wages. The deposit is equal to the amount of restitution due to workers lacking payment evidence. As proper documentation is received, an amount corresponding to the documentation is returned to the depositor. Amounts for any workers who cannot be located are held in the escrow account for three (3) years. Amounts remaining in the account not disbursed by the end of this three-year period shall be returned to the Prime Contractor.
- b) Where underpayments are suspected or alleged and an investigation has not yet been completed. The deposit is equal to the amount of wage restitution and liquidated damages, if applicable, that is estimated to be due. If the final determination of wages due is less than the amount estimated and placed in the escrow account, the escrow will be reduced to the final amount and the difference will be returned to the depositor. If the parties agree to the investigative findings, the amounts due to workers will be disbursed from the escrow account in accordance with the schedule of wages due. Amounts for unfound workers will be retained for a period of three (3) years and subsequently disbursed to the depositor as described above in Paragraph 7a.
- c) Where the parties are waiting for the outcome of an administrative hearing that has been or will be filed contesting a final determination of wages due. The deposit shall be equal to the amount of wage restitution and liquidated dates, if applicable, that have been determined to be due. Once the final decision is rendered, disbursements from the escrow account are made in accordance with the decision.

Direct questions relating to any of the information above to the NH DOT Office of Federal Compliance (603-271-6752).